

FILED

**COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. §§ 1983**

Name CRANE RICHARD  
 (Last) (First)

J RICHARD W. WICKING  
 (Initial) CLERK  
 U.S. DISTRICT COURT  
 NO. DIST. OF CALIF.

Prisoner Number C-44519

Institutional Address SVSP, 31625 HWY 101; P.O. Box 1050, Soledad, CA 93960

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

RICHARD JOSEPH CRANE,  
 (Enter the full name of plaintiff in this action.)

vs.

D. AMBRIZ, and ZORNES, C.O.'s;

D. GALLOWAY, Correctional Sgt.,

S. HATTON, Captain (A),

D.M. MANTEL, and G.A. NEOTTI,  
 (Enter the full name of the defendant(s) in this action)

Case No. C-07-4620 JF (PR)  
 (To be provided by the Clerk of Court)  
**FIRST AMENDED**  
**COMPLAINT UNDER THE**  
**CIVIL RIGHTS ACT,**  
**Title 42 U.S.C § 1983**

*[All questions on this complaint form must be answered in order for your action to proceed..]*

**I. Exhaustion of Administrative Remedies.**

**[Note:** You must exhaust your administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.]

A. Place of present confinement Salinas Valley State Prison

B. Is there a grievance procedure in this institution?

YES (x) NO ( )

C. Did you present the facts in your complaint for review through the grievance procedure?

YES (x) NO ( )

D. If your answer is YES, list the appeal number and the date and result of the appeal at each level of review. If you did not pursue a certain level of appeal, explain why.

COMPLAINT

1. Informal appeal BYPASSED April 11, 2007
2. First formal level BYPASSED 5-23-07
3. Second formal level Denied and completed June 20, 2007, but withheld until plaintiff filed a State habeas corpus petition against Appeals Officials Aug 09, 2007
4. Third formal level Waived by G.A. Neotti, Chief Deputy Warden, June 20th, but delivered August 09, 2007 (See, Exhibit A.) Title 15, § 3084.7 (b)(1)

E. Is the last level to which you appealed the highest level of appeal available to you?

YES (x) NO ( )

F. If you did not present your claim for review through the grievance procedure, explain why. Not applicable

## II. Parties.

A. Write your name and your present address. Do the same for additional plaintiffs, if any.

Richard Joseph Crane, CDCR No. C-44519, Salinas Valley State Prison, 31625 Highway 101; P.O. Box 1050, Soledad, California 93960-1050

B. Write the full name of each defendant, his or her official position, and his or her place of employment.

D. Ambriz, Correctional Officer at Salinas Valley State

1 Prison ("SVSP"); Zornes, Correctional Officer ("SVSP");  
 2 D. Galloway, Correctional Sgt., ("SVSP"); S. Hatton, Captain  
 3 (Acting) ("SVSP"); D.M. Mantel, Chief Disciplinary Officer  
 4 ("SVSP"); G.A. Neotti, Chief Deputy Warden, ("SVSP").

5 III. Statement of Claim.

6 State here as briefly as possible the facts of your case. Be sure to describe how each  
 7 defendant is involved and to include dates, when possible. Do not give any legal arguments or  
 8 cite any cases or statutes. If you have more than one claim, each claim should be set forth in a  
 9 separate numbered paragraph.

10 On March 08, 2007, C.O. D. Ambriz stopped plaintiff at  
 11 the entrance to Building 3, while plaintiff returned from the  
 12 law library and stated: "Crane you're still going to be in  
 13 prison." C.O. Ambriz taunted plaintiff with retaliation for  
 14 suing Prison Guards and the Warden, M.S. Evans. March 16,  
 15 2007, at 7:30 P.M. the electrical power went off inside of my  
 16 cell, and the neighbors Michael Clark and Todd Amos called to  
 17 C.O. Zornes and requested he turn the power back on. Zornes  
 18 asked and received a key from C.O. Ambriz to open the chase  
 19 to turn the power on, but once Zornes tried the key, it did  
 20 not fit the lock. Michael Clark informed plaintiff that C.O.  
 21 Ambriz had given the wrong key to Zornes, and this was to  
 22 keep plaintiff from using his typewriter.

23 IV. Relief.

24 Your complaint cannot go forward unless you request specific relief. State briefly exactly  
 25 what you want the court to do for you. Make no legal arguments; cite no cases or statutes.

26 1. Injunctive relief; 2. Declaratory judgment; 3. Compensatory  
 27 damages according to proof; 4. Punitive damages according to  
 28 proof; 5. Reasonable attorney fees pursuant to 42 U.S.C.

I declare under penalty of perjury that the foregoing is true and correct.

Richard J. Crane  
Richard J. Crane  
(Plaintiff's signature)

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7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9  
10  
11

12 RICHARD JOSEPH CRANE, )

13 Plaintiff, )

14 vs. )

15 D. AMBRIZ, and ZORNES, C.O.'s, )

16 D. GALLOWAY, Correctional Sgt., )

17 S. HATTON, Correctional Captain (A), )

18 D.M. MANTEL, Chief Disciplinary Officer, )

19 G.A. NEOTTI, Chief Deputy Warden, )

20 Defendants. )  
21

No.

FIRST AMENDED  
COMPLAINT UNDER THE  
CIVIL RIGHTS ACT,  
Title 42 U.S.C. § 1983

22 JURISDICTION

23 1. This action is brought pursuant to 42 U.S.C. § 1983.  
24 Therefore jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343.

25 VENUE

26 2. All of the conduct giving rise to the claims alleged  
27 herein arose in Monterey County, California. Therefore, venue  
28 is proper under 28 U.S.C. § 1391(b)(2).

1 INTRODUCTION

2 3. This is a claim for damages and injunctive relief  
3 brought pursuant to Title 42 U.S.C. § 1983, against prison  
4 officials for violations of plaintiff Richard Joseph Crane's  
5 rights under the First Amendment to the United States Constitution.

6 4. This claim further states a violation of the Due Process  
7 Clause, that an administrative regulation must give fair warning  
8 of the conduct which it prohibits. And violation 42 U.S.C. § 1985

9 5. This claim furthermore states the denial of due process  
10 in the administrative appeals process in violations of the  
11 Fourteenth Amendment, and that this denial was taken to conceal  
12 evidence which could be used against the defendants.

13 PARTIES

14 6. Plaintiff Richard Joseph Crane is and was, at all times  
15 relevant hereto, a prisoner in the custody of the California  
16 Department of Corrections and Rehabilitation ("CDCR"). At the  
17 times of the events relevant hereto, Richard Joseph Crane, was  
18 incarcerated at Salinas Valley State Prison ("SVSP"), in Monterey  
19 County, California.

20 7. Defendant D. Ambriz, is a Correctional Officer for the  
21 "CDCR" who, at all times relevant hereto was employed in that  
22 position at Salinas Valley State Prison.

23 8. Defendant Zornes, is a Correctional Officer for the  
24 "CDCR" who, at all times relevant hereto was employed in that  
25 position at Salinas Valley State Prison.

26 9. Defendant D. Galloway, is a Correctional Sergeant for  
27 the "CDCR" who, at all times relevant hereto was employed in that  
28 position at Salinas Valley State Prison.

10. Defendant S. Hatton, is a Correctional Captain (Acting) for the "CDCR" who, at all times relevant hereto was employed in that position at Salinas Valley State Prison.

11. Defendant D.M. Mantel, was a Chief Disciplinary Officer (Acting) for "CDCR" who, at all times relevant hereto was employed in that position at Salinas Valley State Prison.

12. Defendant G.A. Neotti, is a Chief Deputy Warden for the "CDCR" who, at all times relevant hereto was employed in that position at Salinas Valley State Prison.

13. At all times relevant and mentioned in this complaint, each individual defendant was acting under color of state law.

14. At all times mentioned in this complaint, each individual defendant was acting in their official capacity and in the scope and course of their employment.

15. All of the defendants, and each of them, are also sued in their individual capacities for the claims alleged in this complaint.

## FACTS

16. March 16, 2007, at 7:30 P.M. inmates Michael Clark and Todd Amos, in cell number 125 next door to the plaintiff, called out of their cell to C.O. Zornes and, asked if he could "turn the power back on," since the power was shut off earlier. C.O. Zornes called up to C.O. Ambriz in the control tower of building 3, and asked for the key to open the chase between the cells 124 and 125 connected to the same power source. C.O. Ambriz gave a key to Zornes, who came and attempted to open the chase with the key. Zornes announced that, "the key doesn't work!" Then Zornes gave the key back to C.O. Ambriz in the control tower.

1           17. March 16, 2007, Michael Clark called next door to the  
2 plaintiff, and told the plaintiff that, C.O. Ambriz must have  
3 given the wrong key to Zornes, and maybe Ambriz did not want the  
4 power on, since it would prevent plaintiff from typing pleadings  
5 to federal court in lawsuits which the plaintiff was litigating  
6 against "SVSP" Officials, M.S. Evans (Warden), D.M. Mantel, Capt.,  
7 and S. Hatton, Lieutenant, and other prison guards for claims  
8 including beatings and filing false charges against the plaintiff.

9           18. March 16, 2007, plaintiff responded to Michael Clark's  
10 message by calling out of the cell 124 (directly below the tower)  
11 to C.O. Ambriz, asking if plaintiff could speak with Ambriz.

12           19. March 16, 2007, Ambriz reacted to plaintiff's request  
13 by mocking "I can't hear you," and "what?" The plaintiff politely  
14 replied "do I have to write it up?" C.O. Ambriz went to the  
15 small port window from tower to office where C.O. Zornes was in  
16 the office, and told C.O. Zornes that, plaintiff was threatening  
17 to "file on him." C.O. Zornes came out of the office enraged with  
18 a key in his hand and approached to the plaintiff's cell with the  
19 key striking the cell window with the key violently stating: "The  
20 key doesn't work. Your power will be off until Monday. If you  
21 want to 602 me go ahead, I don't give a shit. The name is  
22 Zornes." C.O. Zornes was wild and threatening waving the key and  
23 striking the cell window with the key clenched in his fist.

24           20. March 16, 2007, at 11:00 P.M. Count time, and a different  
25 shift of guards for First Watch on duty. Michael Clark asked the  
26 guard if he would turn the power back on. The floor guard went  
27 to the tower control guard (whom replaced Ambriz) and asked for  
28 the key to open the chase, and used the key to turn the power on.



1) 21. March 16, 2007, after 11:00 P.M. Count, the plaintiff  
2 realized that, C.O. Ambriz had given the wrong key to C.O. Zornes  
3 for the chase, and had created a conflict between C.O. Zornes and  
4 the plaintiff by this act, plus Ambriz telling C.O. Zornes that  
5 the plaintiff was threatening to file on him, further instigated  
6 the conflict between Zornes and the plaintiff.

7 22. March 20, 2007, plaintiff mailed an affidavit to the  
8 United States District Court Northern District of California, case  
9 number C-07-0763 JF (PR), in support of a temporary restraining  
10 order against prison guards and officials at Salinas Valley State  
11 Prison, which was filed March 26, 2007. (Exhibit B.) Plaintiff  
12 filed this affidavit to document the fact that, C.O. Ambriz was  
13 going to retaliate against the plaintiff for his litigation on  
14 the "SVSP" Prison Guards. (See, Exhibit B.)

15 23. March 19, 2007, C.O. Zornes searched the plaintiff's cell,  
16 and C.O. Ambriz wrote a false CDC 115 Rules Violation Report  
17 ("RVR"), alleging that the plaintiff was Out of Bounds. (See,  
18 Exhibit C.) This "RVR" was first known to the plaintiff on March  
19 28, 2007, one week after the plaintiff documented that the prison  
20 guards were "unequivocally" "conspiring together to take  
21 retribution against this affiant for his civil rights actions."  
22 (See, Exhibit B, p. 4 ¶15.)

23 24. March 20, 2007, C.O. Zornes refused to allow plaintiff  
24 to attend the law library even though the plaintiff had a Inmate  
25 Pass for law library at 1:00 P.M. (See, Exhibit B, exhibit A.)

26 25. The "RVR" written on March 19, 2007, by C.O. Ambriz is  
27 a false and retaliatory report, which was written after the  
28 plaintiff had threatened to file on him on March 16, 2007.

1           26. March 26, 2007, C.O. Ambriz signed the "RVR" Log No.  
2   A07-03-0073, which does not state a recognized violation of any  
3   rule of behavior defined by the California Code of Regulations,  
4   Title 15, Div. 3, Chapter 1, Rules and Regulations.

5           27. The March 26, 2007, "RVR" states a false rules violation  
6   of "Out of Bounds," pursuant to California Code of Regulations,  
7   Title 15, § 3015, when the facts written in the "RVR" do not  
8   substantiate a violation of Out of Bounds. (Exhibit C, "RVR".)

9           **"3015. Unauthorized Areas and Facility Boundaries.**

10           (a) Every area of a facility which is out of  
11   bounds to inmates or which is only out of bounds  
12   at specified times shall be clearly designated.  
13   Inmates shall not enter such areas unless  
14   specifically authorized to do so by staff."

15           28. April 11, 2007, D. Galloway, Correctional Sergeant found  
16   Richard J. Crane guilty of the specific act of Out of bounds, and  
17   assessed punishment at Loss of Privileges for 30 days.

18           29. April 17, 2007, S. Hatton, Captain (Acting) reviewed and  
19   approved the false retaliatory "RVR" Log. No. A07-03-0073.

20           30. April 17, 2007, D.M. Mantel, Chief Disciplinary Officer  
21   (Acting) approved of the false and retaliatory "RVR" Log No. A07-  
22   03-0073.

23           31. S. Hatton, Lieutenant is a Defendant in another civil  
24   rights lawsuit in the United States District Court Northern  
25   District of California, Case No. C-06-6910 JF, and took this  
26   action to further retaliate against Richard J. Crane for pursuing  
27   that lawsuit against him. Exhibit J

28           32. D.M. Mantel, C.D.O. is a Captain at Salinas Valley State  
29   Prison on Facility 'A', and Richard J. Crane is suing Mantel in  
30   Case No. C-07-0763 JF, therefore D.M. Mantel retaliated for this.

1           33. Sergeant D. Galloway obstructed Richard Crane's previous  
2 Medical Appeal, and acted to prevent Richard Crane from pursuing  
3 a civil rights lawsuit against Salinas Valley State Prison for the  
4 denial of outdoor exercise in violation of the Eighth Amendment.

5           34. Sergeant D. Galloway is named by Richard Crane, in an  
6 Motion As Amicus Curia to enforce violation of California Prisons  
7 Health Care Receivership pursuant to Local Rule 66-1, and Local  
8 Rules 7-1, and 7-8, in Case Plata vs. Schwarzenegger, No. C-01-  
9 1351-TEH, and sought to retaliate also for Richard Crane filing  
10 against him.

11           35. D. Ambriz, Correctional Officer; Zornes, Correctional  
12 Officer; D. Galloway, Correctional Sergeant; S. Hatton, Captain  
13 (Acting); D.M. Mantel, Chief Disciplinary Officer (Acting), are all  
14 acting in concert in numerous violations of Richard Crane's civil  
15 rights by inhumane conditions of confinement; thus, they have all  
16 acted together to retaliate against Richard Crane for suing them.

17           36. G.A. Neotti, next did not interview any of the witnesses  
18 named in Richard Crane's administrative appeal Log No. 07-02012,  
19 but merely affirmed the guilty finding of a false and retaliatory  
20 "RVR", and waited until August 09, 2007, to deliver the denial to  
21 the appellant which was dated June 20, 2007.

22           37. On June 20, 2007, G.A. Neotti, was aware that Richard  
23 Crane was suing the Warden, M.S. Evans, and the Secretary of  
24 "CDCR" was being sued by Richard Crane in Case No. C-06-6910 JF,  
25 and waived the "Director's Level of Review," to retaliate while  
26 attempting to insulate the Secretary from liability for the  
27 First Amendment retaliation. (See, Exhibit A, June 20, 2007, 2nd  
28 Level Response, page 2 Decision.)

1           38. March 14, 2007, Richard Crane filed a Citizen's  
2 Complaint CDC 602 Appeal against Sgt., D. Galloway, which was  
3 screened out by on March 15, 2007. The complaint concerned the  
4 practice of forcing two inmates to shower in a one man shower, and  
5 this unconstitutional practice has been imposed for over three  
6 years at "SVSP" Facility 'A'. Sgt., Galloway retaliated also for  
7 Richard Crane filing this complaint against him for the actions  
8 of imposing this practice to deny Richard Crane the shower which  
9 is afforded ever 72 hours for lockdown inmates. (Exhibits D and E.)

10           39. Sergeant D. Galloway; S. Hatton, Captain (Acting); D.M.  
11 Mantel, Chief Disciplinary Officer (Acting); and G.A. Neotti,  
12 Chief Deputy Warden, are each individually and officially  
13 responsible for their actions in confirming and endorsing this  
14 clearly false, retaliatory, Rules Violation Log No. A07-03-0073,  
15 written by C.O., D. Ambriz.

16           40. It is the belief of Richard Crane that, the Prison  
17 Officials named in this lawsuit are conspiring together to harm  
18 Richard Crane for suing them in civil rights lawsuit against  
19 the Salinas Valley State Prison for the denial of outdoor exercise  
20 and the denial of equal access to prison activities as inmates  
21 who have not been designated as having "sensitive needs," in  
22 violation of the Fourteenth Amendment. Furthermore, these Prison  
23 Officials are retaliating against Richard Crane for his active  
24 assistance to inmates who are likewise suing Salinas Valley State  
25 Prison, and for the fact that Richard Crane has reported numerous  
26 abuses and assaults by Prison Guards on inmates and filing false  
27 administrative charges with impunity.  
28

COUNT ONE**FIRST AMENDMENT RETALIATION BY STATE PRISON  
OFFICIALS WHILE ACTING UNDER COLOR OF AUTHORITY**

41. Richard J. Crane, realleges and incorporates by reference each allegation of paragraphs 1 through 40, inclusive, as if alleged herein.

42. On March 16, 2007, C.O., D. Ambriz gave C.O. Zornes a key which would not open the chase for the electrical power outlet, and did this willingly to create hostility between Richard Crane and Prison Guard Zornes.

43. March 16, 2007, when Richard Crane stated "do I have to write it up," C.O. Ambriz retaliated against Richard Crane for his exercising of his First Amendment rights, and instigated C.O. Zornes to conspire with him to retaliate against Richard Crane.

44. **42 § 1985 Conspiracy to interfere with civil rights**

**(3) Depriving persons of rights or privileges**

If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws;

45. On March 19, 2007, C.O.'s D. Ambriz, and Zornes came to work at approximately 2:00 P.M. and began stalking for Richard Crane, because of his exercise of his rights under the First Amendment.

46. March 19, 2007, C.O. Ambriz wrote a false and retaliatory "RVR" alleging "Out of Bounds" against Richard Crane while it was clearly a false administrative charge.

1           47. Defendants' took these actions as a "retaliation against  
2 a prisoner for pursuing a grievance", which "violates the right to  
3 petition government for redress of grievances guaranteed by the  
4 First and Fourteenth Amendments and is actionable under § 1983.  
5 Franco v. Kelly, 854 F.2d 584 (prison alleged that false  
6 disciplinary charges were issued in retaliation for his  
7 cooperation with an investigation into inmate abuse).  
8 "[I]ntentional obstruction of a prisoner's right to seek redress  
9 of grievances 'is precisely the sort of oppression that ...  
10 section 1983 [is] intended to remedy.'" Id. at 589 (alteration in  
11 original) (quoting Morello v. James, 810 F.2d 344, 347 (2d Cir.  
12 1987)). The right to petition government for redress of  
13 grievances--in both judicial and administrative forums--is" 'among  
14 the most precious of the liberties safeguarded by the Bill of  
15 Rights.'" Graham v. Henderson, 89 F.3d 75, 80 (2d Cir. 1996).

16           48. Richard Crane had the constitutional right to affirm  
17 "do I have to write it up?". Which is protected by the **Right to**  
18 **Appeal** under the California Code of Regulations, Title 15,  
19 §3084.1, and the right, to not have a "reprisal" taken against  
20 him for exercising this right. ibid., § 3084.1(d).

21           49. The Defendants have deliberately retaliated against  
22 Richard Crane for his exercise of his First Amendment rights.  
23 Rhodes v. Robinson (9th Cir. 2004) 408 F.3d 559, 567.

24           50. The Defendants acted intentionally, maliciously, and  
25 wantonly, to silence Richard Crane or thwart Richard Crane in the  
26 exercise of his First Amendment rights and for having exercised  
27 these rights protected by the First Amendment.  
28

51. As a direct and proximate result of all of the Defendants' actions herein alleged, Richard Crane, suffered injury to the free exercise of his constitutional rights under the First and Fourteenth Amendments. Gomez v. Vernon (9th Cir. 2001) 255 F.3d 1118. See, Exhibit I AFFIDAVIT OF SEMANU MILO.

52. As a further direct and proximate result of all of the defendants' actions herein alleged, Richard Crane, suffered, and continues to suffer the deprivation of the liberty interests vested in the California Code of Regulations Title 15 Section 3084.1, protected by the Fourteenth Amendment.

53. The "RVR" imposed by D. Ambriz against plaintiff for "Out of Bounds," because plaintiff was on the exercise yard, is the imposition of an "Underground Rule," and violates Hillery v. Rushen (9th Cir. (Cal.) 1983) 720 F.2d 1132, prohibiting the California Department of Corrections from imposing sanctions for Regulations which have not been approved by the Administrative Procedures Act. Texas v. Hill, 482 U.S. 451, 96 L.Ed.2d 398, 107 S.Ct. 2502 (U.S.Tex 1987), at 2508.

54. The March 26, 2007, "RVR" written by C.O. Ambriz does not state conduct amounting to the offense charged of "Out of Bounds ," (i.e., C.C.R. Title 15 §3015(a)), and Richard J. Crane had no Notice that being on the recreation yard would constitute the act of out of bounds. Seehausen v. Van Buren, 243 F.Supp.2d 1165, 1169:

"It is clearly established, both by common sense and by precedent, that due process requires fair notice of what conduct is prohibited before a sanction can be imposed." Newell v. Sauser, 79 F.3d 115, 117 (9th Cir. 1996). "[B]ecause we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of

1 ordinary intelligence a reasonable opportunity  
 2 to know what is prohibited, so that he may act  
 3 accordingly." Grayned v. City of Rockford, 408  
 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222  
 ((1972))."

4 55. On March 19, 2007, Richard Crane had been lockdown on  
 5 segregation cell confinement for some 24 days of the previous 33  
 6 days, and had received outdoor exercise on only some 4 days  
 7 including March 19, 2007. Yet, Prison Guard D. Ambriz decided to  
 8 write Richard Crane an "RVR" for being outdoors for recreation on  
 9 March 19, 2007. LeMaire v. Maass, 12 F.3d 1444, 1457 (9th Cir.  
 10 1993) Some form of regular exercise, including outdoor exercise,  
 11 "is extremely important to the psychological and physical well-  
 12 being" of prisoners. See Spain v. Procunier, 600 F.2d 189, 199  
 13 (9th Cir. 1979). The "long term" deprivation of outdoor exercise  
 14 to prisoners is unconstitutional. See LeMaire, 12 F.3d at 1458;  
 15 Toussaint v. Rushen, 553 F.Supp. 1365, 1380 (N.D.Cal. 1983),  
 16 aff'd in part and vacated in part, 722 F.2d 1490 (9th Cir. 1984).

17 56. Defendant D. Ambriz took this retaliatory action to  
 18 further militate against Richard Crane's requests for outdoor  
 19 exercise, and this was done to spite the existence of a prisoner's  
 20 constitutional right to outdoor exercise under the Eighth Amendment.

21 57. The courts have ordered prison and jail officials to  
 22 afford some minimum of outdoor exercise each week, ranging from  
 23 one hour of outdoor exercise daily to two and a half hours of  
 24 outdoor exercise per week, and the preponderance of authority  
 25 requiring at least one hour a day five days a week. See, inter  
 26 alia, Campbell v. McGruder, aff'd in part and remanded in part,  
 27 580 F.2d 521, 545-546 (D.C.Cir. 1978) (one hour daily); Miller v.  
 28 Carson (M.D.Fla. 1975) 401 F.Supp. 835, 891-93.



1           58. On March 20, 2007, Defendant Zornes refused Richard  
2 Crane the right to attend law library, and told Richard Crane to  
3 "go back to your fucking cell," when released for the 1:00 P.M.  
4 law library pass and was acting wild and aggressive. This action  
5 further supports, the callous disregard for Richard Crane's  
6 constitutional rights Defendant Zornes exhibits.

7           59. On March 19, 2007, Richard Crane did not violate any  
8 administrative rule defined by the California Code of Regulations,  
9 Title 15, Article 1 (Behavior) et seq., and was punished by the  
10 Defendants for exercising his constitutionally protected rights.

11                 "In addition, we find as a matter of law that  
12 plaintiff has stated a claim for retaliation based  
13 on his exercise of constitutionally and statutorily  
14 protected rights. In general, a section 1983 claim  
15 will lie where the government takes negative action  
16 against an individual because of his exercise of  
17 rights guaranteed by the Constitution or federal  
18 laws. See Hynes v. Squillace, 143 F.3d 653, 657  
19 (2d Cir. 1998) (per curiam) (citing Mt. Healthy  
20 Sch. Dist. v. Doyle, 429 U.S. 274, 287, 50 L.Ed.  
21 2d 471, 97 S.Ct. 568 (1977))...."  
22 Friedl v. City of New York, 210 F.3d 79, 80.

23           60. The Defendants acted deliberately, maliciously, and  
24 willfully, to deprive Richard Crane of these federally protected  
25 rights.

26           61. As a direct and proximate result of all of the  
27 Defendants' actions herein alleged, Richard J. Crane, suffered,  
28 injury to his free exercise of his First and Fourteenth Amendment  
rights.

          62. As a further direct and proximate result of all of the  
Defendants' actions herein alleged, Richard J. Crane, suffered,  
the loss of liberty without Due Process in violation of the  
Fourteenth Amendment.

1 See, ; Chavis v. Rowe, 643 F.2d 1218.

2 "Second, "an inmate facing disciplinary charges  
3 must have an opportunity to marshal the facts and  
4 prepare a defense." Giano v. Sullivan, 709 F.Supp.  
5 1209, 1214 (S.D.N.Y. 1989) (citing Wolff, 418 U.S.  
6 at 564, and Patterson v. Coughlin, 761 F.2d 886,  
7 890 (2d Cir. 1985), cert. denied, 474 U.S. 1100,  
8 .... "The inmate facing disciplinary proceedings  
9 should be allowed to call witnesses and present  
10 documentary evidence in his defense when  
11 permitting him to do so will not be unduly  
12 hazardous to institutional safety or correctional  
13 goals. Ordinarily, the right to present evidence  
14 is basic to a fair hearing...." Wolff, 418 U.S.  
15 at 566, n7." Young v. Kann, 926 F.2d 1396, 1399.

16 63. The Hearing Officer Sgt., Galloway denied plaintiff the  
17 right to present witnesses, Michael Clark, Todd Amos, and Carlos  
18 Prado (Exhibit F, G, and H, Affidavits); and to confront the  
19 alleged ducat pass of Floor Officer who alleged that the  
20 plaintiff had gone to a ducat pass, which was not true.

21 "Disciplinary panels in state prison are not  
22 courts. White v. Indiana Parole Board, 266 F.3d  
23 759, 765-66 (7th Cir. 2001). From this it follows  
24 that facts found (or assumed) by the prison  
25 disciplinary board are not entitled to the  
26 presumption of correctness that 28 U.S.C. § 2254  
27 (e) affords to judicial findings. Piggie v. McBride,  
28 277 F.3d 922, 925 (7th Cir. 2002). This means,  
in turn, that when a prisoner who seeks a writ of  
habeas corpus provides competent evidence (such  
as an affidavit by someone with personal knowledge  
of the events) contradicting an assertion by the  
prison disciplinary board on a material question  
of fact pertinent to an issue of constitutional  
law, the district court must hold an evidentiary  
hearing to determine where the truth lies. Piggie,  
277 F.3d at 926; Pannell v. McBride, 306 F.3d 499  
(7th Cir. 2002)." Johnson v. Finnan, 467 F.3d 693,  
694 (7th Cir. 2006).

29 64. The plaintiff asserts by this verified complaint and has  
30 presented affidavits too; that, C.O.'s Ambriz and Zornes both  
31 conspired to file the false disciplinary charge against the  
32 plaintiff. Thus, the "some evidence" standard does not apply.

1 65. "Pearson argues that this court's decision in  
 2 Barnett mandates that we apply the deferential  
 3 Hill standard to his allegation against Hines.  
 4 We disagree. Barnett does not extend the "some  
 5 evidence" standard to immunize retaliatory  
 6 accusations by prison guards. Barnett focused  
 7 on a prison classification committee decision  
 8 to discipline the prisoner. Barnett, 31 F.3d  
 9 at 814.

10 We hold that were a prisoner alleges a  
 11 correctional officer has falsely accused him of  
 12 violating a prison rule in retaliation for the  
 13 prisoner's exercise of his constitutional rights,  
 14 the correctional officer's accusation is not  
 15 entitled to the "some evidence" standard of review  
 16 that we afford disciplinary administrative  
 17 decisions. The magistrate court properly refused  
 18 to apply the "some evidence" standard to Pearson's  
 19 allegedly false and retaliatory accusation. Hines  
 20 v. Gomez (9th Cir. 1997) 108 F.3d 265, 269.

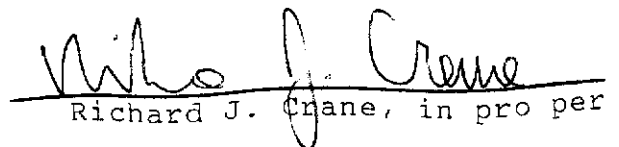
21 66. Thus, the plaintiff has never been afforded the right to  
 22 present the defense to the false disciplinary charge, and this  
 23 requires an evidentiary hearing to ascertain the true facts.  
 24 See, Meeks v. McBride, 81 F.3d 717, 720.

#### 25 CONCLUSION

26 67. Wherefore, the court's have ruled that, "A fundamental  
 27 tenet of due process is that to be sanctioned one must have  
 28 received fair notice that one's allegedly violative conduct was  
 prohibited," and "It is beyond cavil that this principle applies  
 within the prison setting. Coffman v. Trickey, 884 F.2d 1057,  
 (reversed) (8th Cir. 1989) at p. 1060, citing Grayned, ibid., and  
Bouie, with other authorities; Burnsworth v. Gunderson, 179 F.3d  
 771, 774 (9th Cir. 1999).

29 Date: June 08, 2008

Respectfully submitted,

  
 Richard J. Crane, in pro per

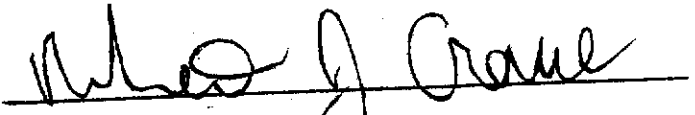
1 68. Richard J. Crane is entitled to injunctive relief, and  
2 declaratory relief, including a declaration that the Rules  
3 Violation dated March 26, 2007, does not detail facts of any known  
4 violation of the prison rules.

5 69. Richard J. Crane, is entitled to injunctive relief, in  
6 but not limited to a transfer to federal custody.

7 VERIFICATION

8 I, declare (or certify, verify, or state) under the penalty  
9 of perjury under the laws of the United States of America that  
10 the foregoing is true and correct. (28 U.S.C. § 1746.) As to  
11 Those matters stated on my information and belief, I believe them  
12 to be true and correct.

13 Dated: June 08, 2008.

14   
15 Richard J. Crane  
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PRAYER FOR RELIEF

WHEREFORE, plaintiff Richard Joseph Crane, prays for the following relief:

1. Injunctive relief;
2. Declaratory judgment;
3. Compensatory damages according to proof;
4. Punitive damages according to proof;
5. Reasonable attorney fees pursuant to 42 U.S.C. § 1988 should counsel eventually be appointed;
6. Cost of suit and court cost;
7. Such further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff Richard Joseph Crane hereby demands a trial by jury.

Dated: June 08, 2008



Richard Joseph Crane, in pro se